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MAR 16 1956
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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1955

No. 92

MABEL BLACK and T. Y. WULFF, etc.,
Petitioners,
v.
CUTTER LABORATORIES, a corporation,
Respondent.

OPPOSITION TO MOTION TO CONTINUE HEARING

Respondent opposes the motion to continue the hearing in the above cause heretofore filed herein by petitioners on the following grounds:

1. Due to delays in the designation of the portion of the record to be printed, for which petitioners were responsible, the hearing of this cause has been delayed beyond the normal period required for preparing a cause for oral argument to the extent that, as we are informed, it is one of the oldest causes in point of time awaiting hearing by this Court. The undersigned is presently engaged in the preparation of the brief for respondent, which will be printed and filed within the time allowed by the rules.

The convenience of the Court would not be served by

1 continuing the argument until after the petitions in the Yates,
2 Mesarosh, Scales and Lightfoot cases are heard, since the issues
3 in the instant case are not essentially the same as those in
4 these Smith Act cases.

5 The instant case is a proceeding to review a decision
6 of the California Supreme Court directing that an arbitration
7 award be vacated on grounds of public policy. The proceedings
8 in the Yates, Mesarosh, Scales and Lightfoot cases, on the other
9 hand, are to review decisions of the Federal courts affirming
10 convictions under the Smith Act.

11 The motion herein states that petitioners in the Yates
12 and Mesarosh cases are seeking a review of the findings of fact
13 of the courts below on the ground of the insufficiency of evi-
14 dence to support a finding that the defendants were connected
15 with a conspiracy to advocate revolution by force and violence.
16 In the instant case, on the other hand, the Arbitration Board
17 found that Doris Brin Walker, the employee involved in the pro-
18 ceeding, was a member of the Communist Party personally dedicated
19 to that party's program of sabotage, force, violence, and the
20 like. Petitioners in their opening brief on file with this Court
21 assert that the findings of fact of the Arbitration Board are
22 conclusive and non-reviewable by the Courts (Brief, p. 6).

23 While at a later point in their brief, petitioners
24 make an extended argument attempting to show that the above-
25 mentioned finding of the Arbitration Board is not supported
26 by substantial evidence, the central issue in the case is
27 whether petitioners have any standing in this Court to have
28 this fact finding of the Arbitration Board, which was re-
29 viewed and reaffirmed by the Supreme Court of California,
30 reviewed and set aside by this Court. The distinction between
31 a civil proceeding in a State Court to enforce the award of
32 an Arbitration Board and criminal proceedings in Federal

1 Courts to punish violations of the Smith Act is so apparent that
2 the matter will not be further labored.

3 2. A. L. Wirin, whose convenience is given as one
4 ground for the motion, first appeared in the case as one of the
5 attorneys for petitioners when the petition for writ of certiorari
6 was filed with this Court. He did not participate in the hearing
7 before the Arbitration Board or in any stage of the court pro-
8 ceedings for the review of the arbitration award until petitioners
9 filed their petition for rehearing by the California Supreme
10 Court. At that time he and his firm joined with other attorneys
11 in appearing as attorneys for two amici curiae. On the other
12 hand, his associate, Mr. Bertram Edises, conducted petitioners'
13 case before the Arbitration Board, presenting all evidence and
14 argument in behalf of petitioners, and prepared all pleadings
15 and briefs and made all of the oral arguments for petitioners
16 before all of the California courts.

17 All dealings which the undersigned has had in this
18 case before this Court have been with Mr. Edises or his firm
19 and with one exception, all of the stipulations and other
20 papers prepared by attorneys for petitioners up to the instant
21 motion have designated Mr. Edises' firm or Mr. Edises himself as
22 the sole attorneys for petitioners. A stipulation in the Cal-
23 ifornia Superior Court for the withdrawal of exhibits for use
24 in connection with the petition for certiorari dated May 6, 1955,
25 was signed by Edises, Treuhart, Grossman and Grogan, by Bertram
26 Edises, as attorneys for petitioners, omitting any mention of
27 Mr. Wirin; the notice to counsel for respondent of the filing of
28 the petition for writ of certiorari was signed by Mr. Edises
29 alone as counsel for petitioners; the original designation of
30 parts of record to be printed dated October 27, 1955, the desig-
31 nation of additional parts of record to be printed dated Novem-
32 ber 9, 1955, and petitioners' combined designation of parts of

1 record to be printed dated December 12, 1955, were also signed
2 by Mr. Edises alone. As late as March 16, 1956, Mr. Edises
3 presented to the undersigned and obtained a stipulation dated
4 March 15, 1956, that either party may refer in briefs or oral
5 argument to any portion of the official record not printed
6 which was signed by Mr. Edises on behalf of the firm of Edises,
7 Treuhart, Grossman and Grogan as the sole attorneys for peti-
8 tioners.

9 For the foregoing reasons, the undersigned respectfully
10 suggests that petitioners have heretofore indicated by their own
11 actions that Mr. Wirin does not play an active or significant
12 role in the representation of petitioners in this cause.

13 3. In the belief that matters to be heard by this
14 Court are of first importance, the undersigned counsel for
15 respondent has so arranged and adjusted his professional en-
16 gagements as to be free to argue the matter orally before the
17 Court at the time now set for such argument, namely, during the
18 week of April 23, 1956. A postponement of the argument until
19 the next term will require the undersigned to make a similar
20 adjustment at the time for which the argument is reset. The
21 undersigned is engaged in a busy and demanding practice and
22 repeated adjustments to meet the requirements of particular
23 matters cause, and will cause, great inconvenience to him. In
24 contrast to Mr. Wirin's position in this matter, the undersigned
25 and his partner, Thomas E. Stanton, Jr., who will also parti-
26 cipate in the oral argument before this Court, have represented
27 respondent throughout the proceedings before the Arbitration
28 Board and the Courts below and throughout the proceedings in
29 this Court.
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1 For the foregoing reasons respondent respectfully
2 submits that the motion should be denied.

3 San Francisco, California

4 March 28, 1956

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6 Respectfully submitted,

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9 GARDINER JOHNSON
10 Attorney for Respondent
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